



DECISION NOTICE OF SHERIFF NIGEL ROSS

ON AN APPLICATION FOR PERMISSION TO APPEAL (DECISION OF UPPER
TRIBUNAL FOR SCOTLAND)

in the case of

JOSPEHINE MARSHALL TRUST, 204 Ashley Gardens, Emery Hill Street, London, SW1P
1PA, per Lindsays, Caledonian Exchange, 19A Canning Street, Edinburgh, EH3 8HE

Appellant

and

MR NICHOLAS CHARLTON, Barr Bheag, Barguillean, Taynuilt, Argyll, PA35 1HY
per Thorntons Law LLP, Whitehall House, 33 Yeaman Shore, Dundee DD1 4BY

and

FIRST-TIER TRIBUNAL FOR SCOTLAND (HOUSING AND PROPERTY CHAMBER),
Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT

Respondents

FTT Case Reference FTS/HPC/EV/18/0045

9 July 2019

Decision

The Tribunal grants leave to appeal in relation to ground 1 only (whether the RSEO was a barrier to demolition).

Permission in relation to grounds 2, 3 and 4 is refused.

Statement of reasons for refusal (SSI 2016/232 Rule 33)

[1] Grounds 2, 3 and 4 do not raise any important point of principle or practice. In particular:-

Ground 2: the appellant gave an undertaking both to the First-tier Tribunal and to the Upper Tribunal that the property will be demolished. The latter was given verbally at the hearing before the Upper Tribunal, on the instructions of the appellant's representatives who were personally present, in the following terms:-

“that if an order for repossession is granted the landlord will demolish the property within 6 months of obtaining vacant possession”.

That undertaking was unqualified and given both to the Upper Tribunal and to the respondent. There is no merit or purpose to an enquiry about the context in which it was given. In any event, the First-tier Tribunal did not found on any doubt about intention. The decision was based on the legal effect of the RSEO.

[2] Ground 3: The same point applies. These statements are made in the context of an unqualified undertaking in the foregoing terms, and where the First-tier Tribunal did not base their decision on the absence of genuine, firm and settled intention. The comments in any event refer not to the absolute state of the property, but to the appellant's subjective intention based on their own subjective assessment of the architect's report they had commissioned. A copy of the appellant's architect's report is lodged.

[3] Ground 4: This is a wrong understanding. The Upper Tribunal was not invited to, and did not, make any formal finding as to the state of the property. There are no findings in fact. The relevance of these statements is to the logic of and justification for the appellant's subjective view and intention, not to whether that view is objectively correct. The latter exercise, namely assessing competing evidence as to the state of the property, was not part of the appeal.